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CRITICAL NOTE.

IMPERIAL BANK OF INDIA *v.* U RAI GYAW THU AND COMPANY, LTD., I.L.R. 51 Cal. 86 : 45 M. L. J. 105 1 Rang. 637 (P. C.).

This decision of their Lordships of the Privy Council deals with a number of points in the mortgage law and it may be useful to consider them in some detail. The main decision in the case is merely a re-statement of the rules as to priority between prior and subsequent mortgagees in respect of fresh advances by the prior mortgagee as enacted in Ss. 79 and 80 of the Transfer of Property Act. It is somewhat unfortunate that sufficient notice was not taken by the Chief Court of Rangoon of the concluding words of S. 80 and their bearing on the case. The question has been held in this country in a number of decisions as resting purely on the language of the two sections. See *Dalip Narayan* v. *Chait Narayan* (1), *Dalip Narayan* v. *Chait Narayan* (2), *Baij Nath Goenka* v. *Daleep Narayan Singh* (3). To quote the words of Mookerjee, J. in *Dalip Narayan* v. *Chait Narayan* (1) the general rule is that a mortgagee making a further advance does not in respect of that advance acquire any priority as against an intermediate mortgagee ; but this is subject to the exception that the intermediate mortgagee who has notice of the prior mortgage is postponed in respect of advances subsequently made on the security of the mortgage provided it expresses the maximum to be secured thereby and the maximum is not exceeded. It is also well known in this connection that the English rule, as enunciated in *Hopkinson* v. *Rolt* (4), and the later cases, is different.

1. (1912) 16 C L J 394.
2. (1912) 16 C L J 401.
3. (1920) Pat. 261 58 I C 489.
4. (1861) 9 H L C 514.

Their Lordships have emphasised in this case, on the distinction between the incidents of a mortgage by deposit of title deeds in England and a mortgage effected by the same means in the various cities enumerated in S. 59 of the Transfer of Property Act. In this country a mortgage by deposit of title deeds is as much a legal mortgage as any of the other forms of mortgages, though at one time this was not clearly recognised. Indeed, as has been pointed out in *Gokul Dass v. Eastern Mortgage and Agency Company* (5) there is nothing like an equitable mortgage in this country. In England, on the other hand, an equitable mortgage is a contract which creates a charge on the property, but does not pass the legal estate to the creditor. Its operation is that of an executory assurance, which as between the parties, and so far as equitable rights and remedies are concerned, is equivalent to an actual assurance and is enforceable under the equitable jurisdiction of the Court. Again an equitable mortgage in England is effected in a variety of ways such as, by an agreement to create a legal mortgage, by a mortgage of the equity of redemption when there is already a legal mortgage, by the deposit of title deeds, etc., 21 Halsbury Ss. 132, 133. A legal mortgage is on the other hand a conditional assurance which vests the legal estate in the mortgagee.

Their Lordships have also pointed out that the rules as to priority between legal and equitable mortgages in England which do not depend on priority in point of time, have no application in this country. Generally speaking, the rule in England is that where the equities are equal, a mortgagee who has the legal estate will prevail over all other mortgages, charges and incumbrances whether he be the first or subsequent incumbrancer and consequently where there is a prior equitable mortgage, and a subsequent legal mortgage without notice of the equitable mortgage, the legal mortgage will prevail. These rules cannot apply to this country as we have no equitable mortgages and the rules as to priority between mortgagees here depend upon the application of Ss. 48, 78, 79 and 80 of the Transfer of Property Act.

It remains only to notice the dicta of their Lordships as to constructive notice to a puisne mortgagee of a prior mortgage by deposit of title-deeds by reason of the former not having enquired for the title-deeds of the property before tak-

5. (1905) I L R 33 C 410.

ing the mortgage. We venture to think the observations of their Lordships on this point are by no means clear. When once it is established that a mortgage of any properties situate anywhere in the moffussil may be effected in the places enumerated in S. 59 of the Transfer of Property Act by the deposit of title deeds, it is not easy to follow their Lordships when they say that the constructive notice by not calling for title deeds is restricted to puisne mortgages of the properties effected only in the specified towns. If the rule as to constructive notice is correct, it should logically extend to all puisne mortgages effected anywhere and of properties situate in any place. Again the observation of their Lordships that a mortgage by deposit of title deeds might involve lands outside the specified towns and not very far remote is open to serious misconception. In the first place that only properties situated *not very far remote* from the specified towns can be subjected to a mortgage by deposit of title-deeds is very indefinite and vague. Besides it is not correct as a statement of the law, as there is no limitation as to the situation of the properties in S. 59 and there is nothing in the decisions to warrant such a construction. See *Madho Das* v *Ram Kishen* (6) and on appeal *Official Assignee of the Estate of Ram Kishen Das* v. *Babu Madho Das* (7) where properties in Benares were subjected to a mortgage by the deposit of title deeds in Calcutta.

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6 (1892) I L R 14 A 238. 7 (1896) I L R 19 A 76 at p 93 (P C).

SUMMARY OF ENGLISH CASES.

B. LIPTON, LTD. *v.* BELL, (1924) 1 K. B. 701.

Bankruptcy—Written authority of debtor to creditor to sell goods and apply proceeds pro rata *to paying creditors—If an assignment—Deeds of Arrangement Act,* 1914.

Where a debtor gives a written authority to a creditor to realize his estate and apply the proceeds in satisfaction of preferential claims and pay the balance to creditors *pro rata*, the document does not contain any of the essential elements of an assignment properly so called, that is, of that form of transfer which law recognizes as *cessio bonorum* and it does not fall within the Deeds of Arrangement Act, 1914.

Per Bankes, L. J. :—There is a well-known meaning attached to the term "assignment" in Bankruptcy Law. It applies to cases where a debtor had executed a deed which assigned all or substantially all his property to a trustee or trustees for the benefit of his creditors generally. No declaration of trust or mere contract is an act of bankruptcy.

In re, Spackman, 24 Q. B. D. 728 and *In re, Hughes,* (1893) 1 Q. B. 595 followed.

Per Atkin, L. J. :—There is no reason for giving to "assignment" in the Deeds of Arrangement Act a meaning different from the meaning of the same word in the Bankruptcy Act.

PERFORMING RIGHT SOCIETY, LTD. *v.* MITCHELL AND BOOKER, LTD., (1924) 1 K. B. 762.

Copyright—Infringement—Servant and independent contractor—Distinction between—Liability of master.

The defendants engaged a band of musicians to play in their theatre, but in the agreement it was expressly stipulated they would not be liable for any infringement of copyright by the latter. It was also notified publicly that no music was to be played in the hall which would be an infringement. Without the knowledge of the defendants an infringement took place and in an action for damages *held* the musicians were the servants of the defendants and as the infringement took place in the course of employment, the latter were liable. Even if the

musicians were independent contractors, if the defendants had actively directed, counselled or aided the infringement they would be liable.

The question whether a man is a servant or independent contractor is a question of law or at least a mixed question of fact and law. Tests for deciding the question discussed.

A. L. UNDERWOOD, LTD. *v.* BANK OF LIVERPOOL AND MARTINS, (1924) 1 K. B. 775.

Company—Single director—Payment of company's cheques into private account—Conversion—Bank crediting payment into private account—Absence of inquiry—Liability.

A merchant who had a banking account at the defendants' bank converted himself into a limited company. All the shares were allotted to him and he was the sole director. A large number of cheques drawn in favour of the company were paid by him into his own account, instead of into the company's account which was with another bank and misappropriated by him. The defendants knew that his business had been transferred to a company, but did not enquire whether the company had a separate banking account, treating him as identical with the company. In an action by the company on behalf of a debenture-holder for conversion, *held,* the Bank was guilty of conversion of all the cheques, unless they proved they acted without negligence.

In the case of a Bank dealing with a company, the former must be taken to have had knowledge of the duties of the directors and the ordinary mode of doing business under the articles. In the case of cheques presented for collection by an agent of the company and put into his own account, they are put on an enquiry as to whether the company had not got its own banking account and the failure to do so amounts to negligence, disentitling them from relying on a defence founded on the ostensible authority of the agent.

A. L. UNDERWOOD, LTD. *v.* BARCLAYS BANK, (1924) 1 K. B. 799.

Banker and customer—Payment in of cheques not belonging to him—Crediting of amount before cheque is cleared—Bank if a holder in due course.

A person paid into his banking account certain cheques to which he had no title. The cheques were credited to his account even before they were cleared. *Held,* this fact alone does not make the Bank a holder for value. To have such an effect there must be a contract between banker and customer, express or implied, that the Bank will before receipt of the proceeds honour cheques of the customer against that amount.

THE KING *v.* DENNIS AND PARKER, (1924) 1 K. B. 867.

Criminal trial—Separate indictments—Joint trial— Consent of counsel—Effect.

It is always the duty of a Criminal Court, even though no objection is put forward by counsel, to take note of a point which goes to the jurisdiction of the Court of trial. Where two indictments against two different persons were proceeded with at one and the same time, even the consent of counsel for the prosecution and the defence does not give jurisdiction to the Court.

LAMB *v.* WRIGHT & CO., (1924) 1 K. B. 857.

Bankruptcy—Property divisible among creditors—" By consent or permission of true owner "—Possession " in his trade or business "—Motor car under hire purchase—Bankruptcy Act (1914), *S.* 38 (*c*).

A person purchased a motor car on the hire purchase system and in the agreement it was stated to be " a pleasure car " During the pendency of the agreement, it was use " in the trade or business " of the purchaser. He became an insolvent and the trustee in bankruptcy claimed ownership under S. 38 (*c*) of the English Bankruptcy Act, 1914, as being " goods in the possession of the bankrupt, in his trade or business, by the consent or permission of the true owner under such circumstances that he is the reputed owner thereof. " *Held,* in order to sustain the claim of the trustee in bankruptcy, the true owner must have consented not only to their being in the possession of the insolvent but also to their being used " in his trade or business " also the article must not only be visibly employed in the trade or business but acquired and used for such business.

ALLIANZA CO., LTD. *v.* COMMISSIONERS OF INLAND REVENUE, (1924) 1 K. B. 870.

Corporation tax—British Company—Residence in England but business wholly abroad—Liability to pay tax—Finance Act, Ss. 52, 53.

Under S. 52 of the Finance Act, 1920, Corporation Profits Tax is leviable " on the profits of a British Company carrying on any trade or business." *Held,* the words were wide enough to include a British Company which is carrying on business entirely outside the United Kingdom. *Held* further the fact that the same company was not liable to income-tax has no bearing on the question.

GLAMORGAN COUNTY COUNCIL *v.* GLASBROOK BROS., (1924) 1 K. B. 879.

Contract—Consideration—Police—Agreement to pay for services—If illegal.

During a colliery strike, the manager required some policemen being billetted there. The police authorities proposed to protect them in the ordinary course, but if police-men were to be billetted they required the men to be specially paid for and provided with food, etc. The manager agreed to the terms. In an action to recover the amount due, *held,* (by the majority of the Court of Appeal, Atkin, L. J. dissenting) the agreement was quite legal ; nor was there want of consideration for the same.

Per Bankes, L. J. :—Though every citizen is entitled to police protection without payment, there is nothing unlawful or against public policy in demanding payment for special police services rendered.

Per Atkin, L. J. :—At common law, it would be plainly contrary to law to charge for the performance of a public duty and the onus is on the person entrusted with the duty to establish some exception to the general rule, validating such a power.

BENAIM AND CO. *v.* DEBONO, (1924) A. C. 514.

Conflict of laws—Sale of goods—Contract to be performed at place different from that at which it was made—Mode of performance—Law governing—Privy Council practice—New point.

Where a contract is made in one country and is to be performed wholly or partly in another country, the law as to the mode of performance may be presumed to be the *lex loci solutionis, i. e.*, of the country where performance is to take place. In a contract for sale the vendee's right to reject the goods falls within the above principle.

Where a party succeeds before the Privy Council on a point not raised in the Courts below, he can be deprived of his costs in the Courts below.

THE SAXICAVA, (1924) P. 131.

Counter-claim—Setting up—What amounts to—Rules of Supreme Court, O. 21, *R.* 16.

The " setting up " of a counter-claim must refer to a setting up in a pleading or in some proceeding which is recognised or directed by the rules and which becomes a part of the record or something which is filed in the Court.

Per Sargant L. J.—A general intimation outside the proceedings of the intention of the defendant to proceed by way of counter-claim is not enough nor is the filing of an affidavit enough. The setting up of the counter-claim means the delivery of the counter-claim according to the rules.

SILVER *v.* SILVER AND GRENFELL, (1924) P. 163.

Divorce—Costs of wife—Prior abortive trial—Right to stay second trial till costs of prior one paid—Waiver—What amounts to.

In a petition for divorce against the wife, the jury disagreed and thereupon the husband applied for a second trial. *Held*, it is one of the rights of the respondent wife to have the trial stayed till the costs of the first trial have been paid. The

mere fact that she accepted an order for payment of costs of the second trial or security for the same, without claiming the unpaid costs of the prior abortive trial does not amount to a waiver of her right to stay the proceedings.

Per Warrington, L. J.—The option is not a matter of discretion but as of right.

B. *v.* B., (1924) P. 176.

Divorce—Custody of child—Adultery of wife—Effect of—Jurisdiction of Court to direct access to child.

Where as a result of a wife's adultery a divorce has been effected, it does not follow that she is thereby *ipso facto* disentitled from access to or having custody of her minor daughter who is below sixteen years of age. In considering the limits of an order granting access to the child, the Court should always view the question from the standpoint of the child's interests.

Case-law on the subject reviewed.

JOTTINGS AND CUTTINGS.

The Russell Case.—At last the Russell case is at an end, after having dragged its sordid way up to the House of Lords; and the ultimate Court of Appeal has decided by the narrowest of margins in favour of the respondent. The majority rested their judgment on a very narrow ground, namely, that no husband or wife could be allowed to give any evidence that would bastardise the issue born to the wife during marriage at such a time as that it might have been conceived during the marriage. The history of this question is interesting. It used to be received as undoubted law in the early days of the common law that if the husband was within the four seas at the time of possible procreation, no evidence of any kind could be received to show that a child born of his wife was not his child—a very comprehensive rule, founded, no doubt, on the dislike of the Church to bastardising of children. It was not until *Pendrel's Case* (2 Str. 925) that this doctrine was overruled, and evidence was allowed to be given of non-access even when the husband was within the four seas. At first, the only evidence admitted under the revised rule was of impossibility of access but gradually the scope was extended. In *Goodright and Stevens* v. *Moss* (2 Cowp. 591) it was contended that a father's declaration that a child who had lived with him and his wife, and was,

in fact, their child, had been born before the marriage, was not admissible in evidence when the question was whether the child was the father's heir. It was in this case that Lord Mansfield formulated the rule which was the foundation of the decision of the majority of the House of Lords in the Russell case. But the great Chief Justice did admit the declaration of the father in that case to prove that the child was born at a date before the marriage. In much more modern times, after parties had become capable of testifying in the box, the House of Lords held that where a child was born six months after the marriage, under such circumstances that it must have been conceived months before that ceremony, the husband might give evidence that before the date of the marriage he had not had any relation with his wife. Lord Halsbury poured a scorn and contempt on the contrary contention; and at last it seemed as though a substantial inroad had been made upon a rule made at a time when the parent declarant was not capable of giving evidence, and so of being cross-examined. But the present decision pursued to its logical conclusion would alter that too, and from that point of view it is a reactionary character.

—*The Law Journal, June* 7, 1924.

Public Interest and Contempt of Court.—In these days, when too many public journals indulge in the pernicious practice of 'trial by newspaper,' it is peculiarly fitting that the Judges, whilst sternly suppressing any real attempts to interfere with the course of justice, should not encourage any undue attempts to interfere with the liberty of the Press. From this point of view the refusal of the Divisional Court of the application for rules *nisi* by the managing director of the Rodeo contests at Wembley against the editor of the *Star* is not unworthy of attention (*Ex parte* C. B. Cochran, June 23). What, in effect the writer of the impugned article said was that 'steer roping' was a form of cruelty, and that, whatever the result of the proceedings before the Wealdstone Justices instituted by the Society for the Prevention of Cruelty to Animals, this part of the programme ought to be stopped. It was urged on behalf of Mr. Cochran that this expression of opinion amounted to a contempt of Court, inasmuch as it was based on the assumption that Mr. Cochran was guilty of the alleged offence for which he was to be tried by the Justices. This was a contention which the Court—consisting of the Lord Chief Justice,

Mr. Justice Swift and Mr. Justice Acton—found little difficulty in rejecting. The article left open the question whether these particular Rodeo contests were lawful or unlawful and nobody could reasonably say that it was calculated to interfere with the due course of justice. The real interest of the case lies in the principle which the Lord Chief Justice laid down as governing all such applications. ' In the opinion of the Court said Lord Hewart, ' it is necessary to be careful in fettering unduly the right of public writers to express themselves on matters of public interest. ' That does not mean, of course, that public writers are entitled to comment on matters of public interest in a manner calculated to interfere with the course of justice. It is, however, a useful reminder that the Press has its rights as well as its duties, and that those rights ought not lightly to be interfered with when dealing with matters of public concern.

—*The Law Journal, June* 28, 1924.

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Lawyers as Presidents of States.—One lawyer has succeeded another in the office of President of the French Republic. M. Doumergue's relations with the legal profession, it is true, are not so intimate as M. Millerand's. The ex-President was, before he devoted himself to politics, one of the busiest and most distinguished advocates in the French Courts. The new President's legal experience has been confined to magisterial posts in the French colonies. All the same, he is to be included among the many lawyers who have held the office of President of the French Republic, some of whom, like M. Loubet and M. Fallieres, as well as the retiring Premier, M. Poincare, have been among its most notable occupants in recent times. Even more marked has been the tendency of America to choose its Chief Magistrates from its lawyers. True, the present occupant of the office is not a member of the legal profession, and the coming election is not likely to give the White House a legal occupant. There have, however, been twenty-nine Presidents of the United States, and no fewer than nineteen, including Adams, Jefferson, Lincoln, Garfield, and Taft (now Chief Justice), have been lawyers.

—*The Law Journal, June* 21, 1924.

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Dickens and the Law.—Did Dickens invent the phrase ' Supreme Court of Judicature '? Mr. Alfred J. Watson, in

a letter to *John o' London's Weekly*, calls attention to these words in the *Pickwick Papers* "The elder Mr. Weller entertained a firm and unalterable conviction that the Old Bailey was the *Supreme Court of Judicature* in this country.' 'Did Dickens,' adds Mr. Watson, '*invent* the title which our legislators of 1873 adopted as that of the newly-arranged Courts, or did some one among the promoters of that great reform re-invent it independently'? In any event, I do not think that the legal profession in this country is generally aware that Dickens used the phrase thirty-seven years before it was embodied in the statute !" —*The Law Journal, June* 7, 1924.

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With the kind permission of Mr. T. Kumaraswamiah, High Court Vakil, we publish the following extracts from the opinion of Sir Tej Bahadur Sapru on the legality of the remittal of the Madras Religious Endowments Bill to the Madras Legislative Council :—

Having stated the facts, he proceeded to consider the question whether the action taken by the Governor under section 81 (A) of the Government of India Act was *ultra vires* ?

As regards this question I am of opinion that before any analogy is sought in the procedure of the House of Commons or any foreign legislature, I think we must look to the terms of the statute. There are two conflicting views which have been expressed on this question. The view of the Advocate-General which was in favour of the Governor's action has been supported in an article in the *Madras Law Weekly*, Vol. XIX, Part 14, of the 4th April, 1924. The other side of the question has been discussed at great length in an article in Vol. XLVI, Part 10, of the *Madras Law Journal* of March, 1924. It seems to me that the three most material sections of the Government of India Act bearing on this matter are Ss. 72 (A), 72 (B) and 81 (A). S. 72 (A) may be said to create Legislative Councils in Governor's Provinces. S. 72 (B) describes the period of time during which a Legislative Council can ordinarily function. The words 'shall continue for three years from its first meeting in S. 72 (B)' seem to me necessarily to imply that three years is normally the utmost length of time prescribed by statute for the existence of a Council unless the Governor extends the period under Cl. (*b*) of the proviso. It follows that upon the expiry of three years the

Legislative Council ceases to function, Under Cl. (*c*), the Governor is bound to appoint a date after the dissolution of the Council not more than six months, or, with the sanction of the Secretary of State, not more than nine months from the date of dissolution for the next session of the Council. Cl. (*c*) do not to my mind imply the continuity of the old Council. In my opinion these words which occur in sub-clause (*c*) of the proviso should be read in conjunction with Cl. (*i*) of section 72 (B) and if they are so read it follows that after the dissolution of a Legislative Council which may take place on the expiry of three years from its meeting or sooner by virtue of action taken by the Governor under sub-clause (*a*) of the proviso, a new Council begins to function. The words 'the next session of the Council' seem to me in the context in which they occur to refer to the session of the Council succeeding the dissolution. Section 72 (A) provides for the creation of the institution known as Council. But section 72 (B) to my mind was intended to provide a time-limit within which each Council was to work and function. I think the analogy to a corporation is wholly misleading and fallacious. The institution of Council as a political and legislative organisation which is created by S. 72 (A) should not on the analogy of a corporation be confused with each particular Council as it may be composed at every election. It is entirely immaterial whether as a result of a general election the members elected to the Council are the same as those who sat in the preceding Council or are different. The very word 'dissolution' which occurs in the proviso to S. 72 (B) seems to my mind to imply that after each dissolution a new Council comes into existence It is obvious that if the Council is to be compared to a corporation, it can only be compared to non-trading corporations such as Municipal Corporations. But such analogy does not help in the solution of the difficulty arising in this case. For in the case of a statutory corporation it has such rights and can do such acts only as are authorised directly or indirectly by the statute creating it and the real question to my mind in the present case does not turn so much upon whether continuity is implied in the case of Council as upon the issue as to whether the Council to which the Bill was returned is the Council contemplated by S. 81 (A) read with S. 72 (B). In other words, I think S. 72 (A) provides for the abstract idea of a political organization known as the Legislative Council, while S. 72 (B)

provides for the concrete embodiment of that idea in the shape of particular bodies liable to dissolution after a certain period. Coming next to S. 81 (A) (1) the power which is given to the Governor to return a Bill to the Council for reconsideration either in whole or in part together with any amendments which he may recommend is a very special power which is to be exercised in relation to the Council which has passed a Bill. If in the opinion of the Governor expediency or reasons of policy require that the Bill should be reconsidered by the Council, he can take action under it. I think the words 'for reconsideration' preceded as they are by the words 'the Council' imply that the Governor is desirous of giving a chance to the Council which has considered the Bill and passed it, to reconsider it along with any amendments which he may recommend. It is possible to urge that upon this interpretation this power of the Governor may lapse or be defeated if before he returns the Bill the Council which considered it originally and passed it has ceased to function. Should any such eventuality happen and the Governor is not satisfied with the Bill as submitted to him and could obtain a reconsideration of it, I think he would be justified in withholding his assent. Anyhow it seems to me that an argument based on inconvenience of this character when further remedy is available should not be allowed to affect the interpretation of the statute. If the argument of convenience has any place in the interpretation of this section, it is at least possible to urge that the Council which has succeeded the Council which passed that Bill had no hand in the shaping of the policy and indeed never gave any consideration to the Bill and it may be not only inconveniencing it but putting a serious limitation on its liberty to ask it to give the Bill or the amendment reconsideration. Under S. 81 (A) it seems to me that there is nothing in Clause 2 of S. 81 (A) which deals with the reservation of Bills which is inconsistent with the interpretation which I have just put on clause 1 of S. 81 (A). Indeed it seems to me that if the period prescribed by the subclauses to clause 2 expires before the dissolution of the Council concerned the same results will follow notwithstanding the inconvenience that would be caused thereby.

I do not think much assistance can be derived in the interpretation of these sections of the statute from the Standing Orders of the Madras Council or the Electoral Rules. Standing Order No. 2, clause 2 provides that if a Member-in-charge

of the Bill makes no mention in regard to the same during two complete sessions, the Bill shall lapse. It also provides for the lapse of all pending notices. I do not think that it is right to hold that a Bill cannot lapse at all unless we take 'the next session' of the fresh Council to be a session coming after the old session. Ordinarily, the word 'session' means 'the period between the opening of Parliament and its prerogation' (*see* Byrne's *Law Dictionary*, page 810). It is somewhat difficult to understand the full significance of the word 'complete' in Standing Order No. 2. But assuming that if no motion is made with regard to a Bill during two complete sessions the Bill will lapse and that the phrase 'two complete sessions' may cover the next session of a fresh Council, it does not seem to me to follow that the next session of a fresh Council can be asked by the Governor to reconsider the Bill which was passed by the preceding Council. It is possible to keep a Bill alive by Standing Orders for the considerations of the new Council but it does not seem to me that the same arguments will necessarily apply to the interpretation of S. 81 (A) which provides for a very special procedure. Standing Order No. 51 provides that when a Bill which has been passed is returned by the Governor to the Council for reconsideration, the point or points referred for consideration shall be put before the Council by the President and shall be discussed and voted upon in the same manner as amendments to a Bill. This does not to my mind help us in the interpretation of S. 81 (A). It does not also seem to me that because only the points that are referred to the Council by the Governor can be considered after the return of the Bill, it does not matter if the Council which is asked to reconsider consists of different persons. I have already pointed out above that if the argument of convenience or inconvenience must be taken into account, it is obviously inconvenient and unfair to a new Council to be called upon to give reconsideration to a Bill for which it was not originally responsible.

Rule 25 of the Madras Electoral Rules runs as follows:—

'On the expiry of the duration of a Council or dissolution a general election should be held in order that a new Council may be constituted.'

It will be observed that in this rule the Council meeting after the general election is spoken of as the 'new Council.' It only shows what view of the matter was taken by the framers

of the rules though I agree that it would not be legitimate to construe the statute in the light of this rule.

It, therefore, seems to me that upon the interpretation of the sections of the statute itself, the action of the Governor under S. 81 (A) was *ultra vires.* Not much assistance can be derived from the practice of the House of Commons in regard to the procedure relating to S. 81 (A) as there is no such thing as the return by the Crown of a Bill passed by Parliament for its reconsideration. There are provisions similar to S. 81 (A) to be found in some of the statutes relating to the Colonies—*vide* 5 and 6 Victoria, Chapter 76, S. 30 (New South Wales), 18 and 19 Victoria, Chapter 39, S. 13 (Australian Colonies) and 15 and 16 Victoria, Chapter 72, S. 56 (New Zealand). But I have not been able to find any authority in those colonies favouring the interpretation which has been accepted in Madras. On the other hand the American Constitution which has a similar clause has been judicially interpreted to mean that where a bill is returned and the House has adjourned, it would not be a good return " as the existence of the House has been terminated by the final adjournment and the House could not be in session until the new term of Congress." It will be noticed that the time-limit for the return of the Bill by the President is ten days. If it is not returned within that period it becomes law unless the Congress by their adjournment prevent its return in which case it shall not be a law (*see* Watson on the *Constitution,* Vol. I, pp. 353 and 365).

In short, as I have stated above, upon my view of the statute the return of this Bill to the new Council was *ultra vires.*

BOOK REVIEW

THE ALL-INDIA DIGEST (CRIMINAL, 1911 TO 1923), by P. Hari Rao, B. A., B. L., Law Printing House.

We are glad to acknowledge the receipt of the above Digest which is a necessary supplement of the late Mr. Sanjeeva Rao's Criminal Digest which brings the criminal cases reported down to the end of 1923 in the body of the work. There is also a Supplement towards the end of the volume digesting the cases of the current year up to the end of June, 1924. We have no doubt that this work will be found of great use to the magistracy, to the judiciary and the bar in general.